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DUPLICATE ORIGINAL

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FILED/ACCEPTED

MAY 22 2007

Federal Communications Commission  
Office of the Secretary

May 22, 2007

VIA MESSENGER

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc., Inc.  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, DC 20002

Re: *Arkansas ('able Telecommunications Ass'n, et al. v. Entergy Arkansas, Inc.*, EB Docket  
No. 06-53, EB-05-MD-004; Stipulated Confidentiality Agreement and Motion for  
Protective Order

Dear Ms. Dortch:

Enclosed for filing please find the original and six copies of the Stipulated Confidentiality Agreement and Motion for Protective Order (signed in counterparts) by and between the parties in the above-captioned proceeding and Highlines Construction Company, Inc.. In addition, we request that you **date-stamp the additional copy provided** and return it with the messenger.

Should you have any questions, please do not hesitate to contact the undersigned

Very truly yours,



Shirley S. Fujimoto

Counsel for Entergy Arkansas, Inc

Enclosures

No. of Copies rec'd 046  
List: ABCDE

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**FILED/ACCEPTED**  
**MAY 22 2007**  
Federal Communications Commission  
Office of the Secretary

In the Matter of	)	
	)	
Arkansas Cable Telecommunications Association; Comcast of Arkansas, Inc.;	)	EB Docket No. 06-53
Buford Communications I, L.P. d/b/a	)	
Alliance Communications Network;	)	
WEHCO Video, Inc.; and TCA Cable	)	EB-05-MD-004
Partners d/b/a Cox Communications,	)	
	)	
<i>Complainants,</i>	)	
	)	
v.	)	
	)	
Entergy Arkansas, Inc.,	)	
	)	
<i>Respondent.</i>	)	

To: The Honorable Arthur I. Steinberg  
Office of the Administrative Law Judge

**STIPULATED CONFIDENTIALITY AGREEMENT AND  
MOTION FOR PROTECTIVE ORDER**

Pursuant to Section 1.313 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.313, Highlines Construction Company, Inc. ("Highlines"), a non-party in the above-captioned proceeding; Arkansas Cable Telecommunications Association, Comcast of Arkansas, Inc., Buford Communications I, L.P. d/b/a Alliance Communications Network, WEHCO Video, Inc., Coxcom, Inc., and Cebridge Acquisition, L.P. d/b/a Suddenlink Communications (collectively "Complainants"); and Entergy Arkansas, Inc. ("EAI" or "Respondent"); by undersigned counsel, hereby move the Court to adopt the following stipulated confidentiality agreement relating to the materials

produced pursuant to subpoena in the above-captioned proceeding, and accordingly enter a protective order as follows:

WHEREAS. Complainants have issued a subpoena for documents to Highlines in the above-captioned proceeding (the “Proceeding”);and

WHEREAS, Highlines is or may in the future be producing “Confidential Documents,” as defined herein in paragraph 1 (“Confidential Documents”), or written discovery responses or deposition testimony containing “Confidential Information,” as defined herein in paragraph 2 (“Confidential Information”), as a result of this Proceeding; and

WHEREAS, Highlines desires to maintain the confidentiality of the Confidential Documents and Confidential Information that may be produced in this Proceeding; and

WHEREAS, there may be a significant cost in determining in advance of production which documents are Confidential Documents; and

WHEREAS, Highlines desires to adopt an efficient and practical procedure for handling confidentiality issues without incurring significant but potentially unnecessary expenses to conduct confidentiality reviews; and

WHEREAS, for the foregoing reasons Highlines, Respondent, and Complainants desire to enter into this stipulated Confidentiality Agreement and Protective Order (“Confidentiality Order”) to govern the discovery of the above-captioned proceeding;

NOW THEREFORE, Highlines, Respondent, and Complainants stipulate and agree as follows:

1. For purposes of this Confidentiality Order, “Confidential Documents” shall include any documents that Highlines or its counsel designate as confidential based upon a good faith belief that the designation is appropriate because the document contains proprietary

or confidential business or financial information, trade secrets, or non-public information of a commercially sensitive, personal, or private nature. Confidential Documents may include information of whatever kind, including but not limited to written information or information otherwise recorded on any medium including, without limitation, paper, photographs, recordings, and electronic, optical, or magnetic disks or files, including any copies of these materials or information derived therefrom.

2. For purposes of this Confidentiality Order, “Confidential Information” shall include any information provided in response to a subpoena for documents or a written discovery request or in response to a deposition question that Highlines or its counsel designate as Confidential based upon a good faith belief that the designation is appropriate because of the proprietary or confidential business or financial nature of the information, trade secrets contained in the information, or the non-public, sensitive, personal, or private nature of the information,

3. **All** documents Highlines produces or has produced in its responses to the subpoena served on Highlines and dated \_\_\_\_ shall be treated as Confidential Documents, as defined herein, from and after the moment of disclosure or production, without any requirement that the Confidential Documents be so marked or otherwise designated Confidential Documents.

4. **At** the time Highlines produces documents to Complainants, Highlines may designate any such documents as Confidential Documents by stamping on each page of such documents the word “Confidential.”

5. At the time Highlines responds to a written discovery request, including a subpoena for documents, other than the subpoena as described in paragraph 3, Highlines may

designate such information as Confidential Information, as defined herein in paragraph 2, by stating in writing in response to the written discovery request that the information is Confidential Information subject to the protections set forth in this Confidentiality Order and by indicating on the first page of the written discovery responses that the document has been designated under seal by Highlines.

6. During any deposition of a Highlines employee or representative, the deponent or counsel for a deponent may designate that the testimony being provided in response to a deposition question contains Confidential Information, as defined herein in paragraph 2, by stating on the record that the information is Confidential Information subject to the protections set forth in this Confidentiality Order. In addition, the deponent or counsel for the deponent may designate additional Confidential Information, as defined herein in paragraph 2, by indicating to Complainants and Respondent, in writing, fifteen (15) days following receipt of a deposition transcript the specific line numbers and page numbers of the transcript that contain Confidential Information subject to the protections set forth in this Confidentiality Order.

7. If Complainants or Respondent receive Confidential Documents or Confidential Information and believe that such documents or information are not entitled to the protections set forth in this Confidentiality Order, such party shall within fifteen (15) business days of receiving such documents or information indicate to Highlines, in writing, the specific documents or information that it believes falls outside of the protections set forth in this Confidentiality Order (“Identified Documents or Information”) and state in writing the rationale for the removal of such Identified Documents or Information from the protections set forth in this Confidentiality Order.

8. If Highlines objects. in writing, to Complainants' or Respondent's written notice that the Identified Documents or Information fall outside of the protections set forth in this Confidentiality Order, such objection shall be made within ten (10) business days of receiving such written notice, or the claim of confidentiality shall be waived. If Complainants **or** Respondent desire to challenge Highlines's claim of confidentiality, such party within ten (10) business days of receiving the objection shall file a Motion to the Administrative Law Judge seeking a ruling on the issue. Highlines, Complainants and Respondent recognize that this Confidentiality Order is not intended to constitute a ruling or prejudgment concerning whether the Identified Documents or Information could or could not be released pursuant to a valid request made under to the Freedom of Information Act, 5 U.S.C. § 552, any other governmental exemption from disclosure, and/or FCC Rule 0.459, 0.461, 47 C.F.R. §§ 0.459, 0.461.

9. Neither the service of the written notice described in paragraph 7 by Complainants or Respondent nor the service of the written notice or filing of a Motion described in paragraph 8 by Highlines shall remove the Identified Documents or Information from the protections set forth in this Confidentiality Order. Until Highlines and Complainants or Respondent resolve the dispute among themselves, Highlines waives the claim of confidentiality, or the Administrative Law Judge resolves the dispute regarding whether the Identified Documents or Information are Confidential Documents or Confidential Information entitled to the protections set forth in this Confidentiality Order, the Identified Documents or Information shall retain the protections set forth in this Confidentiality Order.

10. Highlines, Complainants and Respondent agree that Confidential Documents and Confidential Information may be used during the course of this proceeding for the purpose of

establishing a claim or a defense, but shall not be disclosed, directly or indirectly, to anyone other than the Complainants, the Respondent, attorneys for Highlines, witnesses, consultants, and expert witnesses specially retained or specially employed for purposes of the Proceeding. To the extent any Confidential Documents or Confidential Information are provided to any party's witnesses or expert witnesses, each witness or expert witness shall: (a) agree in writing, in the form attached to this Confidentiality Order as Exhibit A, within twenty **(20)** days of the entry of this Confidentiality Order or prior to receiving any Confidential Documents or Confidential Information, that he shall be bound by the terms of this Confidentiality Order and (b) shall return all Confidential Documents and Confidential Information to Highlines upon conclusion of the Proceeding. Nothing in this Confidentiality Order prevents any party to the Proceeding from disclosing Confidential Documents and Confidential Information to the Administrative Law Judge, subject to such protections as the Administrative Law Judge may order with respect to the treatment of Confidential Documents and Confidential Information at trial.

11. If Confidential Documents or Information in the possession of Complainants or Respondent are subpoenaed or requested by any court, administrative or legislative body, or any other person purporting to have authority to subpoena or request such information, Complainants or Respondent shall give written notice of the subpoena or request (including delivery of a copy thereof) to the attorneys for Highlines not less than five (5) business days prior to the time when production of the information is requested by the subpoena or request. In the event that the subpoena or request purports to require production of such Confidential Documents or Information on less than five (5) days' notice, the party to whom the subpoena or request is directed shall give immediate telephonic notice of the receipt of such subpoena or

request. and forthwith deliver by hand or facsimile a copy thereof, to the attorneys for Highlines. Absent application by Highlines for a protective order or a motion to quash, Complainants or Respondent may comply with the subpoena or request. If Highlines makes an application for a protective order or moves to quash before the return date, Complainants or Respondent shall not produce such Confidential Documents or Information unless it receives a court order authorizing such disclosure or the consent of Highlines. The obligations upon Complainants and Respondent under this paragraph shall terminate upon execution and delivery of Complainants' and Respondent's certificate set out in paragraph 16 this Confidentiality Order.

12. The inadvertent, unintentional, or in camera disclosure of a Confidential Document or Confidential Information shall not, under any circumstance, be deemed a waiver, in whole or in part, of Highlines's claims of confidentiality. If a Confidential Document or Confidential Information is inadvertently produced without the appropriate designation of confidentiality, Complainants and Respondent shall, upon notice of the confidential status of the document or information, treat the document or information as if it had been appropriately designated confidential at the moment it was produced.

13. Complainants, Respondent and all persons subject to the provisions of this Confidentiality Order agree to use Confidential Documents and Confidential Information solely and exclusively for purposes of preparing for, conducting, and participating in the Proceeding and not for any other litigation and not for any other business purpose, personal purpose, or other purpose whatsoever, unless otherwise agreed to in writing by Highlines, Complainants, and Respondent.



14. Highlines's agreement to produce Confidential Documents and Confidential Information pursuant to this Confidentiality Order shall not be deemed an agreement that such documents (1) constitute or contain trade secrets or other confidential research, development, financial, commercial, or personal information or (2) are relevant to any matter at issue in the Proceeding. Highlines reserves the right to object to or to seek an appropriate order limiting any use which Complainants or Respondent may seek to make of such Confidential Documents or Confidential Information either in discovery or at the formal hearing of the Proceeding.

15. Highlines, Complainants and Respondent agree that no copies of Confidential Documents or Confidential Information produced by Highlines will be made except as necessary for the purposes of this Proceeding. If it becomes necessary to include information obtained from Confidential Documents or Confidential Information or to use, such Confidential Documents or Confidential Information in any filing with the Federal Communications Commission, then any such filing shall be made under seal pursuant to FCC Rule 0.459, 47 C.F.R. § 0.459, if not prohibited by law.

16. Upon the conclusion of the Proceeding, Complainants and Respondent, as defined in this Confidentiality Order, shall destroy or delete, ~~uninstall~~, or otherwise remove from each computer, diskette, compact disk, computer file, and any other storage media, all Confidential Documents and Confidential Information, and all copies, extracts, summaries, facsimiles thereof, and all electronically, optically, or magnetically stored information of any kind including, without limitation, diskettes, compact disks, computer files; and similar storage media ("Electronically Stored Documents"). Additionally, a sworn certificate attesting to the destruction and electronic file deletion and indicating that no electronic information has been retained shall be executed by Complainants and Respondent and by their respective counsel and

delivered to Highlines within one hundred twenty (120) days after the conclusion of the case, including any appeal. Notwithstanding the above, briefs, pleadings, written discovery responses, transcriptions of testimony, other court papers prepared for use in the Proceeding and attorney work product or attorney-client privileged materials containing or referring to Confidential Information, or information derived therefrom, need not be destroyed, but shall be kept confidential by counsel for Complainants and Respondent and remain subject to the provisions hereof.

17. Highlines, Complainants, and Respondent agree that nothing herein is intended to alter or diminish the protections of the attorney-client privilege or the work-product doctrine.

18. Because a violation of this Confidentiality Order by Complainants or Respondent could cause irreparable injury to Highlines, and there is no adequate remedy at law for such violation, Highlines shall have the right, in addition to any other remedies available to them at law or in equity, to seek to enjoin Complainants or Respondent from any violation of this Confidentiality Order.

19. This Confidentiality Order shall inure to the benefit of, and be binding upon, Highlines, Complainants, and Respondent and their respective successors, heirs, agents, personal representatives, and assigns.


20. Any time limit contemplated by this Confidentiality Order may be extended by an agreement in writing, signed by counsel of record for Highlines, Complainants, and Respondent.

21. This Confidentiality Order is the entire agreement between Highlines, Complainants, and Respondent. It may not be amended in any manner whatsoever except by

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an agreement in writing, signed by counsel of record for Highlines, Complainants, and Respondent and adopted by Order of the Administrative Law Judge.

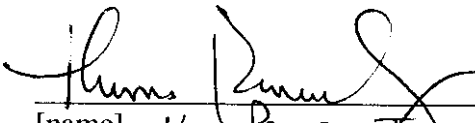
Dated this 3d day of <sup>May</sup>~~March~~, 2007

  
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*Attorneys for Complainants*

## CERTIFICATE OF SERVICE

I, David D. Rines, do hereby certify that on this 22<sup>nd</sup> day of May 2007, a single copy (unless otherwise noted) of the foregoing "Stipulated Confidentiality Agreement and Motion for Protective Order" was delivered to the following by the method indicated:

Marlene H. Dortch (hand delivery) **(ORIGINAL PLUS 6 COPIES)**

Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-A325  
Washington, D.C. 20554

Hon. Arthur I. Steinberg (overnight delivery, fax, e-mail)

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Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554  
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David D. Rines

## **EXHIBIT A**

In the Matter of	)	
	)	
Arkansas Cable Telecommunications	)	EB Docket No. 06-53
Association; Comcast of Arkansas, Inc.;	)	
Buford Communications I, L.P. d/b/a	)	
Alliance Communications Network;	)	
WEHCO Video, Inc.; and TCA Cable	)	EB-05-MD-004
Partners d/b/a Cox Communications,	)	
	)	
<i>Complainants,</i>	)	
	)	
v.	)	
	)	
Entergy Arkansas, Inc.,	)	
	)	
<i>Respondent.</i>	)	

**DECLARATION**

I have been asked to serve as a \_\_\_\_\_ in this Proceeding on behalf of \_\_\_\_\_ one of the parties in the Proceeding. I acknowledge and declare under penalty of perjury that I have received and read the Confidentiality Agreement and Protective Order (“Confidentiality Order”) attached hereto. I agree to be bound by the terms of the Confidentiality Order

I hereby submit to the jurisdiction of the Federal Communications Commission solely for the purpose of enforcement of the Confidentiality Order in this Proceeding.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

By: \_\_\_\_\_  
 [Name]  
 [Title]  
 [Employer]  
 [Address]  
 [Phone]